

The Motor Fuel Tax Law and the Environmental Impact Fee Law grant certain exemptions from tax/fee for sales of aviation fuel and kerosene to holders of certificates of public convenience and necessity or foreign air carrier permits, issued by the U.S. Department of Transportation, and their air carrier affiliates. However, these exemptions do not extend to sales to air carriers who, because they are not required to do so, do not hold such certificates or permits. 35 ILCS 505/2a and 415 ILCS 125/301. (This is a GIL).

July 3, 2001

Dear Xxxxx:

This letter is in response to your letter dated May 16, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This letter is in response to the recent assessments you have sent AAA, disallowing Schedule LB of our Illinois Fuel Tax Return. I am requesting a Private Letter Ruling from you in regard to our interpretation of Illinois Compiled Statutes Revenue Motor Fuel Tax Law 35 ILCS 505 Section 2A Title 86 Underground Storage Tank and Environmental Inspection Fee. Below are the facts to support AAAs position that the LB Schedule includes customers, that are exempt from this tax.

- 1) I have enclosed the first two pages of the U.S. Department of Transportation informational Package, 'How to become A Certificated Air Carrier'. This attachment is labeled as Doc 1. Please Reference marked section 1A, it reads as follows:

1A: There are certain exceptions to this rule. Section 40109 of the statute allows the Department to grant exemptions from the certificate requirement where it finds that such exemptions are 'consistent with the public interest.' Such exemptions may be granted to individual air carriers or to groups or classes of air carriers. Carriers proposing to operate only small aircraft, that is aircraft designed for 60 or fewer seats or with a payload capacity of 18,000 pounds or less are exempt from the certificate requirements and may obtain authority as an air taxi operator or commuter air carrier in accordance with the provisions of Part 298 of the Department's regulations (14 CFR Part 298).

AAA customers listed on schedule LB, non-Certificate 'Carriers for Hire' fall into this above category and are not required to be certificate holders by the U.S.

Department of Treasury. AAA customers would not be listed on the Certificate Air Carrier List issued by the U.S. Department of Transportation for which you are referencing.

- 2) Please Reference Doc 2 enclosed. Informational Bulletin issued by the Illinois Department of Revenue dated December 1989. Section relating to 'which reportable sales are exempt from tax'.

In this section in parenthesis you have stated (i.e., carriers that hold certificates of public convenience and necessity issued by the U.S. Department of Transportation). In this clause you are clearly stating that this is only an example of exemptions.

- 3) Please reference Doc 3, Illinois Department of Revenue Regulations, Title 86 part 500 Section 500.202

The allowance for exemption stated in Tile 86 states that 'no such tax shall be imposed upon importation or receipt of aviation fuels and kerosene at airports with over 300,000 operations per year, for the years prior to 1991, and over 170,000 operations per year beginning in 1991, located in a city of more than 1,000,000 inhabitants for sale or use by holders of Certificates of Public Convenience and Necessity or foreign air carrier permits, issued by the U.S. Department of Transportation, and their air carrier affiliates, or upon the importation or receipt of aviation fuels and kerosene at facilities owned or leased by those certificate or permit holders and used in their activities at an airport described above'.

NAME are both under this category and AAA sales are conducted at these locations.

In conclusion, our interpretation of this law is that the U.S. Department of Transportation does not require certain carriers to become a 'Certified Carrier', per Doc. 1 section 1A. They are however performing the same service as the Certified Carrier, or 'Carriers for Hire'. In the Informational Bulletin, Doc 2 you have also referenced this Certification as only an example. We have also concluded that the requirement for the size of the airport, NAME do fit into the exemption provided per Doc. 3.

AAA request is for a written letter ruling on this issue. Please mail and fax to the attention of PERSON. Thank you for your immediate attention.

With regard to the Underground Storage Tank Tax, Section 2a of the Motor Fuel Tax Law, 35 ILCS 505/2a, provides that "no such tax shall be imposed upon the importation or receipt of aviation fuels and kerosene at airports with over 300,000 operations per year, for years prior to 1991, and over 170,000 operations per year beginning in 1991, located in a city of more than 1,000,000 inhabitants for sale to or use by holders of certificates of public convenience and necessity or foreign air carrier permits, issued by the United States Department of Transportation, and their air carrier affiliates, or upon the importation or receipt of aviation fuels and kerosene at facilities owned or leased by those certificate or permit holders and used in their activities at an airport described above." With regard to the Environmental Impact Fee, Section 310 of the Environmental Impact Fee Law, 415 ILCS 125/310, provides that "no fee shall be imposed upon the importation or receipt of aviation fuels

and kerosene at airports with over 170,000 operations per year, located in a city of more than 1,000,000 inhabitants, for sale to or use by holders of certificates of public convenience and necessity or foreign air carrier permits, issued by the United States Department of Transportation, and their air carrier affiliates, or upon the importation or receipt of aviation fuels and kerosene at facilities owned or leased by those certificate or permit holders and used in their activities at an airport described above.”

As you can see, each exemption applies only to holders of certificates of public convenience and necessity or foreign air carrier permits, issued by the United States Department of Transportation and their air carrier affiliates. There is no language extending the exemption to air carriers who do not hold such certificates or permits because they are not required to do so.

We cannot agree that the Department’s Informational Bulletin FY90-9, by using the abbreviation “i.e.,” indicates that “carriers that hold certificates of public convenience and necessity issued by the U.S. Department of Transportation” is only an example of those to whom the exemption applies. The abbreviation “i.e.” is short for the Latin phrase “id est,” which means “that is.” Had the Department intended only to provide an example, it should have used the abbreviation “e.g.” which means “for example.”

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department’s Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk